

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF MONTANA,)	DOCKET NO.: PT-1996-25
)	
Appellant,)	
)	
-vs-)	
)	
RON TRIPPET,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	ORDER and OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on the 12th day of August, 1997 in Kalispell, Montana in accordance with the order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

The Department of Revenue (DOR), represented by Randy Pierson, Staff Forester, presented testimony in support of the appeal. The taxpayer, Ron Trippet, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, and the Board then took the appeal under advisement.

The Board, having fully considered the testimony, exhibits, and all things and matters presented to it by all parties, finds and concludes as follows:

STATEMENT OF THE ISSUE

Does the subject property meet the definition and qualify as Class 3, agricultural property as determined by the Flathead County Tax Appeal Board?

FINDINGS OF FACT

1. Due, proper, and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded the opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as:

Tract 2 in Section 24, Township 29, Range 22, Tract 1E in Section 25, Township 29, Range 22 & Tract 3AB in Section 25, Township 29, Range 22, Flathead County, State of Montana. Land only consisting of 11.59 acres. Assessor #0242200.

3. The DOR appraised the subject property for the 1996 tax year at a value of \$34,180.

4. The taxpayer filed an Application For Agricultural Classification of Lands, AB-3A form, in 1995 which was signed by the taxpayer but undated. This application was approved Class 3 (agricultural) by the DOR on July 17, 1995, stating:

you must apply yearly for all parcels less than

20.00 acres.

5. The taxpayer filed an Application For Agricultural Classification of Lands, AB-3A form, May 29, 1996. The DOR denied the application, stating:

See attached property review form.

6. The taxpayer filed an AB-26 Property Review Form, dated May 1, 1996, stating:

This property was (unintelligible) is part of over 20 acres. The 1.47 is non-irrigated, the 6 acre (sic) are still grazing, the 2.27 is still (unintelligible) & .75 is tillable (unintelligible). Please make note of 1995 figure which are (sic) right. 1996 is wrong.

7. The DOR denied the taxpayers request of Class 3, agricultural classification on the AB-26 Property Review Form, dated September 17, 1996, stating:

The ownership of assessor #0242200 is Ron E. Trippet and carries a "bundle of rights" with that ownership. The ownership of assessor #0982533 is Nami C. Stevens & carries a "bundle of rights" with that ownership. This is (sic) two separate ownerships & two separate "bundle of rights". Each ownership must show \$1500 gross income. The schedule F you furnished our office with, is not on file with the IRS & therefore not valid. Our office must see documented proof of income, such as receipts from the sales, & who the products were sold to, & when the products were sold to them. It is within your rights to appeal this decision to the county tax appeal board within thirty days of this notice.

8. On October 29th, 1996, the taxpayer appealed to

the Flathead County Tax Appeal Board requesting a value of \$9,200 for the land, stating:

I have protested my taxes since 1993-95 due to the wrong action taken for farm land value. In 1995 this was done & now in 1996 it was changed. We have on file AB-3A and also irrigation cost.

9. The county tax appeal board's decision dated June 23rd, 1997, granted the taxpayer's appeal, stating:

It is the decision of the Board that this land be classified agricultural, the Department of Revenue is ordered to make this change for the 1996 tax year.

10. The DOR appealed the county board's decision on July 22nd, 1997, stating:

The nature of the proof adduced at the hearing was insufficient from a factual and a legal standpoint, to support the Boards decision.

DEPARTMENT OF REVENUE'S CONTENTIONS

The DOR granted the taxpayer agricultural classification for the subject property in 1995 based on income information provided by the taxpayer. The DOR required that the taxpayer file again for agricultural classification in 1996 and, in addition, provide proof of \$1,500 earned income from the subject property.

In DOR's exhibit B are portions of Title 15, relating to the classification of agricultural property.

The subject property is less than 20 acres in size and to qualify as Class 3, agricultural property, certain criteria must be met.

The taxpayer has combined income earned from this parcel along with income earned from an adjacent parcel owned by Nami Stevens, Mr. Trippet's spouse. Because these parcels are in separate ownerships and have separate identification numbers, the income or production cannot be combined.

DOR's exhibit D is a two page document, supplied to the DOR by the taxpayer and, in summary, illustrates the following:

General Journal

Person	Address	Description	Amount
Mark	Kalispell	hay	175
Steve	Marion	hay/ plant	100
Mike and Nancy	Kila	hay	120
R.N.T., LTD	Kalispell	flowers	1500

this is a list of people or companys (sic) that have bought products from me. This information is provided to the Flathead County Appraisal office to answer queson (sic) #1 of form AB-3A (rev 9/93).

Internal Revenue Service

Schedule F	Profit or Loss From Farming
Gross Income	1895.00

Net farm profit or (loss) None

TAXPAYER'S CONTENTIONS

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prior years was classified as agricultural property.

The taxpayer provided the DOR with a gross income figure in the amount of \$1,895. This is income generated from the subject parcel in addition to the adjacent parcel. Mr. Trippet contends that this total income qualifies the subject parcel for the agricultural classification along with the adjacent parcel.

The taxpayer owns R.N.T., LTD dba Trippet's Printing. The printing business provides flowers to its customers as a marketing tool. The printing business also purchases flowers from local nurseries to make up for short-falls in supply from the subject property.

The subject property originally consisted of approximately 22 acres. A zone change for the property was done when a golf course was constructed adjacent; and, subsequently, the taxpayer split the parcel into two parcels: one parcel in the name of the taxpayer and the other parcel in the name of taxpayer's spouse, Nami C. Stevens.

The taxpayer stated that hay is harvested from the subject parcel along with a variety of flowers.

DISCUSSION

The issue before this Board is whether or not the

subject property qualifies as Class 3, agricultural property.

For a property less than 20 acres to qualify as Class 3, agricultural property, certain criteria must be met. §15-7-202. MCA, states in part:

(2) Contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use are eligible for valuation, assessment, and taxation as agricultural each year that the parcels meet any of the following qualifications:

(a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than \$1,500 in annual gross income from the raising of agricultural products as defined in 15-1-101; or

(b) the parcels would have met the qualifications set out in subsection (2)(a) were it not for independent, intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in case proof of qualification in a prior year will suffice.

The taxpayer stated that no money actually changed hands between the printing company and the taxpayer, as one would tend to believe when reading exhibit D.

The taxpayer owns the subject parcel, which consists of 11.59 acres. The taxpayer's wife owns the adjacent, contiguous parcel of 12.11 acres. These parcels in prior years consisted of one parcel. The taxpayer along with his spouse made a decision to split the property and create separate ownerships. The taxpayer stated that they were informed of the advantages of assessing the parcels as one, which allows in

§15-7-202 MCA for different treatment for Class 3, agricultural property, by exceeding 20 acres.

Based on the evidence and testimony presented, it is the Board's opinion that the subject property does not qualify as Class 3, agricultural property as defined in §15-7-202 MCA. The appeal of the DOR is hereby granted.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. §15-2-301 MCA

2. §15-7-201 MCA Legislative intent - value of agricultural property.

3. §15-7-201 MCA Eligibility of land for valuation as agricultural.

4. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and the taxpayer must overcome this presumption. The Department of Revenue, however, should bear a certain burden of providing documented evidence to support its assessed value. Western Airlines, Inc. v. Catherine J. Michunovich, et al, 149 Mont._347.428 P.2d 3.(1967).

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Flathead County by the assessor of that county at the 1996 tax year as Class 4, tract land, as determined by the DOR. The decision of the Flathead County Tax Appeal Board is therefore reversed.

Dated this 26th day of September, 1997.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. McKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

I certify that on this 26th day of September, 1997, a true and correct copy of the foregoing Order was served by placing same in the United States Mail, postage prepaid, and addressed as follows:

Ron Trippet
P.O. Box 32
Kalispell, Montana 59903

Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, Montana 59620

Department of Revenue
Property Assessment Division
c/o Randy Pearson
Sam W. Mitchell Building
Helena, Montana 59620

Flathead County Appraisal Office
P.O. Box 920
Kalispell, Montana 59903-0920

Flathead County Tax Appeal Board
723 5th Avenue East
Suite 224
Kalispell, Montana 59901-5364

DONNA WESTERBUR
Administrative Assistant